

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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ELLINOR RICO, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ELIZABETH  
PATRICIA SANCHEZ, AND ON BEHALF OF ALL PERSONS ENTITLED TO RECOVER  
FOR THE DEATH OF ELIZABETH PATRICIA SANCHEZ,  
*Plaintiff/Appellant,*  
*v.*

CORRECTIONS CORPORATION OF AMERICA, A TENNESSEE CORPORATION;  
TERESA LANIER, M.D. AND JOHN DOE LANIER, WIFE AND HUSBAND;  
BORU NALE, M.D. AND JANE DOE NALE, HUSBAND AND WIFE,  
*Defendants/Appellees.*

No. 2 CA-CV 2017-0181  
Filed October 31, 2019

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).*

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Appeal from the Superior Court in Pinal County  
No. CV201401024  
The Honorable Lawrence M. Wharton, Judge

**AFFIRMED**

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COUNSEL

Goldberg & Osborne, Tucson  
By Lisa Kimmel  
*Counsel for Plaintiff/Appellant*

Struck Love Bojanowski & Acedo PLC, Chandler  
By Daniel P. Struck and Kevin L. Nguyen  
*Counsel for Defendants/Appellees*

**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

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ESPINOSA, Judge:

¶1 Following a jury trial, Ellinor Rico, as personal representative of the estate of Elizabeth Sanchez, appealed from the final judgment in favor of the defendants in her wrongful death action, claiming the trial court committed multiple evidentiary errors. For the reasons that follow, we affirm.

**Factual and Procedural Background**

¶2 We view the evidence in the light most favorable to upholding the jury's verdict. *S Dev. Co. v. Pima Capital Mgmt. Co.*, 201 Ariz. 10, ¶ 3 (App. 2001). At all relevant times, Sanchez was an inmate at the Florence Correctional Center (FCC), which is owned and operated by Corrections Corporation of America (CCA). In early August 2011, Sanchez had a fever and complained of abdominal pain and nausea. Dr. Teresa Lanier examined her and, after listening to Sanchez's chest, detected a "probable heart murmur" and sent her to the emergency room at Mountain Vista Medical Center (MVMC) for further evaluation. Doctors there diagnosed Sanchez with a urinary tract infection, ovarian cyst, and dehydration. She was given medication and discharged back to the FCC medical unit. Upon Sanchez's return, Lanier examined her again and noted she had no fever, her vital signs were normal, and MVMC's diagnosis explained her symptoms.

¶3 Sanchez the next day saw Dr. Boru Nale and reported she was doing better, "her pain was better," and she wanted to return to her cell. Because her symptoms were resolving, she was released from care and Nale scheduled a follow-up visit in one week. At the follow-up visit, he performed a complete examination of Sanchez, who reported she had no new issues and her abdominal complaints had resolved. Nale noted a heart murmur and included "infective endocarditis" in "the differential

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diagnosis” and asked Sanchez related questions.<sup>1</sup> She denied having any medical history or cardiac symptoms indicating endocarditis or otherwise suggesting the murmur was problematic. Four days later, Sanchez returned to the medical unit complaining she had “passed out” after being outside in the prison yard. Her vital signs were checked and reported stable, and she had no fever or indication of infective endocarditis or other notable condition.

¶4 In early September, Sanchez could not be aroused from her sleep and was taken to a hospital. She remained unconscious at the hospital, and after doctors discovered bleeding in her brain she was diagnosed as brain dead. Blood culture results were subsequently “in all probability” negative for infective endocarditis, and an infectious disease specialist opined that syphilis was a likely cause of a brain aneurism. Sanchez died at the hospital.

¶5 Rico thereafter brought a wrongful death action on behalf of the statutory beneficiaries as the personal representative of Sanchez’s estate against CCA and Drs. Lanier and Nale (“Appellees”).<sup>2</sup> She alleged that CCA had failed to exercise reasonable care in preserving Sanchez’s physical safety and that Drs. Lanier and Nale had been negligent in her care, claiming endocarditis should have been in the differential diagnosis and medical staff should have performed more tests to evaluate her condition.

¶6 Before trial, Appellees moved in limine “to exclude all opinions and testimony” by one of Rico’s standard of care experts, Carole Lillis, R.N., arguing Rico had not alleged a theory of wrongful death liability based on deficient nursing care and Lillis’s opinions were therefore “irrelevant and inadmissible.” Rico responded that her complaint included allegations of nursing negligence and Lillis’s expert affidavit made her testimony relevant. At oral argument, Appellees pointed out that Rico’s only claim mentioning nurses related to unnamed defendants, and she had not amended her complaint to disclose any. The trial court ruled Lillis

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<sup>1</sup>According to cardiologist Dr. Navin Kedia, infective endocarditis is an infection of the heart valves. A differential diagnosis is a “routine” process physicians follow to consider “all the possibilities that could be the cause” of a patient’s symptoms.

<sup>2</sup>Rico also named three other defendants, including MVMC, an MVMC doctor, and the FCC warden, but voluntarily dismissed her claims against them before trial.

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would not be permitted to testify unless the doctors testified “that any lack of care . . . was a result of the nurses’ involvement in her care.”<sup>3</sup>

¶7 The trial court also precluded Rico’s emergency medicine expert as irrelevant because the MVMC doctor had been dismissed and Appellees were willing to stipulate to the testimony that Rico had disclosed for that expert. Rico agreed to the stipulation, and the court stated that if Appellees “put the blame on” MVMC, then her emergency medicine expert would be permitted to testify.

¶8 After a seven-day trial, the jury returned a complete defense verdict, and the trial court subsequently entered judgment in favor of CCA and Drs. Lanier and Nale. Following the denial of her motion for new trial, Rico appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

**Discussion**

¶9 Rico argues the trial court erred by precluding two of her expert witnesses, effectively dismissing her nursing negligence claim, and allowing other experts to provide testimony outside their area of expertise. We review evidentiary rulings for an abuse of discretion. *Waddell v. Titan Ins. Co.*, 207 Ariz. 529, ¶ 28 (App. 2004).

¶10 Rico first claims the trial court abused its discretion in precluding the testimony of nurse Lillis as irrelevant. She also asserts that the preclusion of the testimony constituted a “de facto dismissal” of her nursing negligence cause of action, which amounted to “an inappropriate summary adjudication” of the claim, depriving her of the “procedural safeguards” of Rule 56, Ariz. R. Civ. P. She cites no pertinent authority for these propositions but argues the court erroneously concluded “nurses have no independent duty of care that gives rise to liability.” The court did not, however, preclude Lillis’s testimony on that basis; rather, the testimony was disallowed because Rico had not alleged negligence by any nurses involved, instead focusing on Appellees’ care. The court further ruled, however, that Lillis could testify if Appellees inserted the conduct of nurses into the trial. Rico does not meaningfully explain how the court’s conditional preclusion of evidence amounted to a ruling as a matter of law that nurses have no independent duty of care that could give rise to liability. Accordingly, she has not demonstrated the court abused its discretion.

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<sup>3</sup>On the fourth day of trial, Rico moved for reconsideration of the court’s ruling that Lillis could not testify, and the court denied the motion.

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¶11 Rico also contends the trial court abused its discretion by precluding the testimony of her emergency medical expert. She generally argues “[g]iven the questioning and argument by CCA throughout the case, it would have assisted the jury to have a live competent witness explain the duty and rol[e] of the emergency department relative to the medical issues presented in this case.” But Rico has not shown why the expert’s testimony about the duties of emergency doctors was material after she had dismissed her claims against the emergency doctor. *See* Ariz. R. Evid. 402 (“Irrelevant evidence is not admissible.”). Nor has she explained why, even if deemed relevant, the testimony would not have been cumulative to the stipulated testimony, which was read to the jury. *See Felipe v. Theme Tech Corp.*, 235 Ariz. 520, ¶¶ 21-22 (App. 2014) (Cumulative evidence “augments or tends to establish a point already proved by other evidence” and may be excluded in the discretion of the trial court.). Rico has again demonstrated no error.

¶12 Finally, Rico maintains the trial court repeatedly “violated A.R.S. § 12-2604 in allowing experts to give testimony outside of their area of expertise.”<sup>4</sup> She asserts “Dr. Kedia was asked questions about emergency medical treatment and whether Lanier and/or Nale’s treatment was appropriate. Dr. Peek was allowed to criticize the pathologist’s autopsy, and Dr. Lanier testified to the conduct of the Emergency Department.” But she fails to explain how the statute applies to the referenced testimony, and she does not state with any particularity how this testimony violated the statute or how any such violation resulted in prejudice beyond speculating, without challenging the court’s jury instructions, that “the jury could only become confused.”

¶13 In short, beyond asserting error, Rico does not develop this argument in any meaningful way or demonstrate the court abused its discretion in permitting the testimony. It is not enough to simply assert error was committed; the appellant must state with particularity why or how the trial court erred in making its rulings. *See Modular Sys., Inc. v. Naisbitt*, 114 Ariz. 582, 587 (App. 1977). Accordingly, this issue is waived,

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<sup>4</sup>Section 12-2604(A) establishes criteria for experts who testify about the appropriate standard of care in a medical negligence claim. If the party against whom or on whose behalf the testimony is offered is a board-certified specialist, the expert witness must also be board-certified in that specialty. § 12-2604(A)(1). An expert must also have devoted certain time to clinical practice or instructing in the specialty. § 12-2604(A)(2). Section 12-2604(D) restricts the use of experts whose fees are contingent on the outcome of the case.

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and we do not further address it. *See Stafford v. Burns*, 241 Ariz. 474, ¶ 34 (App. 2017) (argument waived when not developed “in a meaningful way”).

**Disposition**

¶14 For the foregoing reasons, the trial court’s entry of judgment in favor of Appellees is affirmed.